

APPEAL NO. 023162
FILED FEBRUARY 6, 2003

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on November 20, 2002. The hearing officer determined that the respondent (claimant) sustained a compensable injury on _____; that the appellant (carrier) is not relieved of liability under Section 409.002 because of the claimant's timely notification to his employer pursuant to Section 409.001; and that the carrier waived the right to contest the claimed injury by not contesting the injury in accordance with Section 409.021. The carrier appealed, and the file does not contain a response from the claimant.

DECISION

Affirmed.

On appeal, the carrier challenges the hearing officer's determinations that the claimant sustained a work-related injury and that he timely notified his employer of the same. The carrier asserts that these determinations are against the great weight of the evidence. The issues presented questions of fact for the hearing officer. The hearing officer is the sole judge of the weight and credibility of the evidence. Section 410.165(a); Texas Employers Ins. Ass'n v. Campos, 666 S.W.2d 286 (Tex. App.-Houston [14th Dist.] 1984, no writ). There was conflicting evidence presented on the disputed issues. It was for the hearing officer, as the trier of fact, to resolve the conflicts and inconsistencies in the evidence and to determine what facts had been established. Garza v. Commercial Ins. Co., 508 S.W.2d 701 (Tex. Civ. App.-Amarillo 1974, no writ). Nothing in our review of the record reveals that the hearing officer's determinations are so contrary to the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. As such, no sound basis exists for us to reverse those determinations on appeal. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986).

The carrier next challenges the hearing officer's determination that it waived the right to contest the claimed injury by not contesting the injury in accordance with Section 409.021. The evidence reflects that the carrier received its first report of written injury on January 29, 2002, and filed its Payment of Compensation or Notice of Refused/Disputed Claim (TWCC-21) on March 26, 2002. With regard to the waiver issue, the carrier essentially asserts that the hearing officer erred by retroactively applying the holding in Continental Casualty Company v. Downs, 81 S.W.3d 803 (Tex. 2002), to this proceeding. We note that Downs, which requires adherence to the seven-day "pay or dispute" provisions of Section 409.021, became final on August 30, 2002. Effective September 12, 2002, the Texas Workers' Compensation Commission (Commission) updated its previous advisories to require compliance with Downs. Texas Workers' Compensation Commission Advisory 2002-15, effective September 12, 2002. The advisory provided, "All previous Advisories issued by the Commission regarding

this issue are *superseded* by this Advisory and the Supreme Court decision.” (Emphasis added). The Appeals Panel has since applied Downs when the issue of carrier waiver is raised on appeal. See, e.g., Texas Workers' Compensation Commission Appeal No. 022274, decided October 17, 2002 (rejecting the carrier's argument that Downs should not be applied retroactively); Texas Workers' Compensation Commission Appeal No. 022230, decided October 21, 2002; Texas Workers' Compensation Commission Appeal No. 021944-s, decided September 11, 2002. In view of our prior decisions and the evidence that the carrier neither initiated the payment of benefits nor denied the claim within seven days after receiving written notice of the claimant's injury, we cannot conclude that the hearing officer erred in determining that the carrier waived its right to contest compensability of the claimant's injury.

The hearing officer's decision and order are affirmed.

The true corporate name of the insurance carrier is **ZURICH AMERICAN INSURANCE COMPANY** and the name and address of its registered agent for service of process is

**GARY SUDOL
9330 LBJ FREEWAY, SUITE 1200
DALLAS, TEXAS 75243.**

Daniel R. Barry
Appeals Judge

CONCUR:

Judy L. S. Barnes
Appeals Judge

Chris Cowan
Appeals Judge